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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,114	11/13/2003	Robert J. Yotka	1391/1561	7674

28455 7590 11/03/2005
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EXAMINER

CORBIN, ARTHUR L

ART UNIT PAPER NUMBER

1761

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/712,114

Applicant(s)

YATKA ET AL.

Examiner

Arthur L. Corbin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6, 11, 24-27, 30 and 31 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 6, 11, 24-27, 30, 31 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 6, 11, 24-27, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nofre et al in view of Yotka et al. Applicant is referred to paragraph no. 7, Paper No. 081104. Further, applicant's claimed panning procedure to apply the coating is well known according to Yotka et al (Abstract).

3. Claims 6, 11, 24-27, 30 and 31 are also rejected under 35 U.S.C. 103(a) as being unpatentable over Nofre et al (5,510,508, cols. 1 and 6) or Nofre et al (5,460,668, cols. 4-6 and claim 3) in view of Glass et al (4,374,858, col. 1, line 62 to col. 2, line 13 and col. 3, lines 1-12) and further in view of Yotka et al. Applicant is referred to paragraph no. 4, Paper No. 070505 and to the last sentence in paragraph no. 2 above.

4. Applicant's arguments filed October 17, 2005 have been fully considered but they are not persuasive. Although Yotka et al does not disclose the use of sweeteners other than alitame as part of a rolling compound, as applicant contends, the fact that Yotka et al suggests using a well known sweetener in such a manner would lead the skilled artisan to conclude that it would have been obvious to apply this well known coating concept using other conventional chewing gum sweeteners. Applicant's logic, that the use of one sweetener in a particular fashion does not mean that it would have been obvious to use other similar sweeteners accordingly, is faulty. Otherwise, applicant would have us believe that every time a different but similar sweetener is used in

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applicant's process, such a process would be patentable. Clearly, this is not convincing.

Yatka et al's use of a panning procedure to apply alitame to chewing gum will not necessarily delay its release, as applicant concludes. Some modification of the alitame would also be required to achieve such a result. Further, whereas Yatka et al does not suggest mixing alitame with another sweetener, as applicant argues, Yatka et al does render it obvious to use a panning procedure to apply a sweetener to chewing gum as part of a rolling compound. Since Nofre et al ('668) suggests using alitame in combination with applicant's claimed aspartame sweetener, it thus becomes obvious to apply this sweetener combination to chewing gum by the panning procedure disclosed for alitame in Yatka et al.

Applicant's remarks with regard to Glass et al are not convincing. Glass et al applies aspartame itself to chewing gum as part of a rolling compound, and aspartame is quite similar in its properties to applicant's claimed N-substituted aspartame thereby making it obvious to apply either in the same manner regardless of the reason.

Applicant's attempt to refute this position, by asserting that Nofre et al ('668) teaches that N-substituted aspartame is more stable in chewing gum than unsubstituted aspartame, is without merit since Nofre et al does not support applicant's assertion.

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

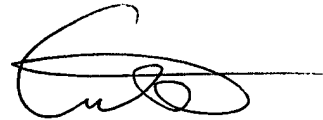
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-1399. The examiner can normally be reached on Monday-Friday from 10:30 AM to 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton I. Cano, can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'Arthur L. Corbin', written over a horizontal line.

Arthur L Corbin
Primary Examiner
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10-31-06